



POLICE DEPARTMENT CITY OF NEW YORK

April 5, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Alexis DeJesus
Tax Registry No. 946903
44 Precinct
Disciplinary Case No. 2015-13700

Lieutenant Enrique Rodriguez
Tax Registry No. 895928
33 Precinct
Disciplinary Case No. 2015-13701

Charges and Specifications:

Disciplinary Case No. 2015-13700

1. Said Police Officer Alexis DeJesus, on or about October 4, 2014, at approximately 2100 hours, while assigned to the 44th Precinct and on duty, in the vicinity of Morris Avenue and East 170th Street, Bronx County, did wrongfully use force against Person A, in that he struck him in the face with handcuffs, without police necessity.

P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-13701

1. Said Lieutenant Enrique Rodriguez, on or about October 4, 2014, at approximately 2100 hours, while assigned to the 44th Precinct and on duty, in the vicinity of Morris Avenue and East 170th Street, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient legal authority.

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2. Said Lieutenant Enrique Rodriguez, on or about October 4, 2014, at approximately 2100 hours, while assigned to the 44th Precinct and on duty, in the vicinity of Morris Avenue and East 170th Street, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped Person B without sufficient legal authority.

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Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For Respondent DeJesus: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

For Respondent Rodriguez: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, New York 10279

Hearing Date:
February 26, 2016

Decision: Respondent DeJesus is found Not Guilty. Respondent Rodriguez is found Guilty of Specifications 1 and 2 of Case Number 2015-13701.

Trial Commissioner:
ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on February 26, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent DeJesus Not Guilty in Case Number 2015-13700 and Respondent Rodriguez Guilty of Specifications 1 and 2 of Case Number 2015-13701.

FINDINGS AND ANALYSIS

It is undisputed that on October 4, 2014, at approximately 8:30 p.m. Respondents were assigned to anti-crime in the 44 Precinct. Respondents and Police Officer Ortiz were patrolling in plain clothes in a car. They placed two males, Person B and Person A in custody. During the apprehension of Person A, he sustained an injury to his forehead from contact with Respondent DeJesus's handcuffs and was taken to the hospital where he received stitches for two lacerations.

Respondent Rodriguez has been charged with stopping the two males without sufficient legal authority and Respondent DeJesus has been charged with wrongfully using force against Person A in striking him in the face with handcuffs without police necessity.

Neither Person A nor Person B appeared at trial to testify despite being personally served with subpoenas to appear. An audio CD and transcript of the CCRB interview with Person A was admitted into evidence. An audio CD and a transcript of a telephone interview with a person purported to be Person B was also admitted into evidence.

Both Respondents testified at the trial. Respondent Rodriguez testified that he was supervising the anti-crime unit that evening. He described the 44 Precinct as a very busy precinct which could be violent at times. On that night he decided to go to the area near [REDACTED] Street since there had been a rash of auto break-ins between [REDACTED] and [REDACTED] Street and [REDACTED]. There had also been a rash of robberies at that time around [REDACTED] Street. (Tr. 28) He described this area as fairly desolate.

As they drove down [REDACTED] Street between [REDACTED] and [REDACTED] he saw a trailer midway down the block. It was common to see tractor trailers parked in this area since

local merchants used these trucks to hold their merchandise. Some complaints had been received from these merchants about thefts. (Tr. 34-35)

As Respondents were driving down [REDACTED] Avenue past the trailer, Respondent Rodriguez saw several legs of individuals on the sidewalk behind the trailer and ordered his car to be stopped. (Tr. 35-36) Respondent Rodriguez testified that he thought the people might be breaking into the truck. He got out of the car and went to the sidewalk where he saw four males and two females. He said to the individuals, "Police, Don't move." (Tr. 38-39) His intention was to stop the individuals to investigate. (Tr. 51) He acknowledged that if the individuals had not answered his questions he would have stopped them from walking away. (Tr. 59) At this point one of the males said, "Oh shit. Police." The males grabbed at their waist areas, turned around and ran. Because they grabbed at their waistbands Respondent thought that, although they may have just been trying to hold their pants up, it was also possible that they may have possessed a weapon. (Tr. 38-39)

Respondent ran after two males who ran towards [REDACTED] Street, while Respondent DeJesus ran after the other males. (Tr. 39) Respondent could not catch up with the males he was chasing. (Tr. 42) After approximately three to five minutes, he went to the area where Respondent DeJesus and Officer Ortiz were on [REDACTED] Street to the east of [REDACTED] Avenue. When he got there, Person A and Person B were already in custody. (Tr. 43) Respondent Rodriguez saw that Person A was bleeding and he got napkins from the car and wiped his head and also called for an ambulance. Person A told Respondent Rodriguez, "Your man just punched me, Cap." (Tr. 44-45) Respondent Rodriguez testified that he told Person A the only reason the officer would have punched him was

if he was resisting and Person A said that Respondent Rodriguez was right. (Tr. 44)

Person A told Respondent Rodriguez he ran because he had a knife. A gravity knife was found in his pocket. He was placed under arrest and charged with possession of the knife. (Tr. 46, 72-74)

Respondent Rodriguez said Respondent DeJesus, at the scene, told him he had chased Person A, he resisted and he got hit. When Respondent Rodriguez was able to get a more complete description from Respondent DeJesus back at the command he realized he had assumed Respondent DeJesus hit him with the cuffs in the middle of a struggle but learned that Respondent DeJesus accidentally hit Person A in the forehead with the cuffs as he was trying to open them to cuff Person A. (Tr. 47-48)

Respondent DeJesus testified similarly to Respondent Rodriguez as to the initial observations of legs behind the trailer. He added that he smelled marijuana. (Tr. 63) He testified that they yelled out, "Police. Don't move," and then he heard "Cops, Cops," and everyone started to run. He further testified that his handcuffs and flashlight had fallen to the ground as he got out of the car and he just picked them up and started running after two individuals. (Tr. 62-63) During the chase he saw Person A place a dark object into his sweater pocket. At that point, Respondent DeJesus was scared that the object could be a weapon. (Tr. 65)

Respondent DeJesus was able to put his flashlight in its holster but since the handcuffs had to be clipped on he was still running with them in his left hand. (Tr. 65) He lost the individuals for a brief time when he heard a group of girls start to scream when the individuals ran through them. He thought the girls may have seen something dangerous so he took his weapon out. (Tr. 66) When the individuals got closer he said,

"Police, Stop." He could now see the males had nothing in their hands so he holstered his firearm. (Tr. 66-67) The males did stop and he placed them both on the ground. Police Officer Ortiz then arrived and he began to place Person B under arrest behind where Respondent DeJesus was dealing with Person A. Respondent DeJesus heard Officer Ortiz say, "Let me see your hands," in the area behind him.

Respondent DeJesus described being scared at this time because he didn't know what was going on behind him and he knew the other male hadn't been cuffed yet. Respondent DeJesus was crouched over Person A who was lying face down on the ground at this point. Respondent DeJesus had his handcuffs in his left hand. Person A started to turn towards the area behind them by making a slight movement with his body and moving his head up to the left at the same time that Respondent DeJesus was moving the handcuffs from his left to his right hand. (Tr. 67-68) Respondent DeJesus couldn't see Person A's hands at that time and was still concerned that he might have a weapon on him. He was holding the handcuffs by the top circular portion. As he was switching them from one hand to another, the bottom hollow double sided portion of the handcuffs hit Person A in the head one time. (Tr. 69) Respondent DeJesus did then handcuff Person A and when he picked him up from the ground he noticed he had an injury.

Respondent Rodriguez then returned to the area and Respondent DeJesus went to look for any possible weapons that could have been discarded along the chase route. (Tr. 72)

Respondent DeJesus transported Person A to the hospital in an ambulance. (Tr. 73)

The incident was reported to IAB by Respondent Rodriguez that evening. (Tr. 46-47) IAB conducted an investigation into the incident involving Respondent DeJesus and Person A and unsubstantiated it. (Tr. 74) Respondent DeJesus also testified that he

received a notice of claim concerning the incident in which Person A claimed that Respondent DeJesus repeatedly hit him in the head with the handcuffs for no reason and that he pummeled him by repeatedly hitting him in the head. (Tr. 77-78)

In Person A's statement to CCRB he first said that he was just walking home with one friend, Person B, when unidentified men got out of an unidentified car near [REDACTED] Street and [REDACTED] Avenue. He and Person B ran down [REDACTED] Street until they saw the men were police and then they stopped. (CCRB Ex. 1 A, 3-6, 9) One officer had his gun pointed at Person A's chest. (CCRB Ex. 1A, 13) Person A got down on the ground and the officer took his hand behind his back to handcuff him. There was no issue with him putting his hands behind his back. (CCRB Ex. 1 A, 14) He stated he saw the officer's arms struggle to take the cuffs off his side. He further stated that the officer slammed the cuffs across his face and he was injured on his forehead. (CCRB Ex. 1A, 16) He stated at one point when his hands were behind his back and he was facing down, he turned his head to the left to see his friend who was behind him getting kicked. (CCRB Ex. 1A, 21-22)

Person A acknowledged he had a knife on him, but stated that he had just found it about three minutes before he was stopped. (CCRB Ex. 1A, 28) Also, when asked about his prior statement to IAB, Person A acknowledged that he told IAB he was actually with two other males in addition to Person B and he also stated that he saw one of them, Derrick, run off in a different direction. (CCRB Ex. 1A, 33, 37)

In a telephone interview, the person who identified himself as Person B, stated that he and Person A and two other males were on their way to a party when the police just pulled up in front of them. (CCRB Ex. 2A, 3, 9-10) He didn't see what

happened to Person A because he was on the ground being kicked. (CCRB Ex. 1B, 4, 16).

The hospital records which are in evidence indicate that Person A was a seventeen year old male who presented with, "two simple parallel 1 cm lacerations to the patient's left forehead." There were no other abrasions or lacerations on his face. The head was atraumatic. (CCRB Ex. 3, 25) He was treated with stitches and discharged. (CCRB Ex. 3)

Respondent Rodriguez – Case number 13701/15

With regard to Respondent Rodriguez, the issue is whether he had sufficient legal authority to stop both Person A and Person B. Under *People v. DeBour*, 40 NY2d 210 (1976) an officer is permitted to approach an individual to request information, so long as there is some objective, credible reason for the request, not necessarily indicative of criminality. The second level allows a common-law right of inquiry where there is a founded suspicion that criminal activity is afoot. Under level three, an officer can forcibly stop and detain a person where the officer has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. The fourth level allows an officer to arrest and take into custody an individual whom he has probable cause to believe has committed a crime.

In this case Respondent did have a sufficient basis for approaching the males to request information. They were not just walking down the block but were standing in a group in the middle of a desolate area on a block behind a type of vehicle which was the subject of break-ins in the area. As Respondent was approaching the males however, and before he even made any inquiries or heard the males say, "Oh shit. Police," and before

he saw them grab their waistbands and start to run, he ordered the males to stop. This constituted a stop which would have required reasonable suspicion that a crime had been or was being or about to be committed. At this point in time, upon the mere observation of males behind a trailer, Respondent did not have sufficient reasonable suspicion to order them to stop. I therefore find him Guilty of Specifications 1 and 2.

Respondent DeJesus – Case number 13700/15

Preliminarily, I note that Respondent DeJesus was not charged with the initial stop, only with improper use of force. On that issue, I credit Respondent DeJesus's testimony that his handcuffs accidentally hit Person A during the arrest process and find him not guilty of striking Person A in the face with the handcuffs without police necessity. While I find that portions of Person A's testimony were not credible, such as his initial statement that he was alone with Person B and they were just walking home, other portions of his testimony and the medical records serve to corroborate the testimony of Respondent DeJesus. Person A describes himself as lying face down and then turning his head around to see what was going on behind him while Respondent DeJesus was in the process of handcuffing him. This is precisely the description of events as provided by Respondent DeJesus. Also, the hospital records and photos of the injury, are consistent with minor lacerations such as would have been caused by the handcuffs swiping across Person A's forehead as opposed to a direct punch to the head or the multiple punches and pummeling that Person A apparently included in his notice of claim.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

Rodriguez was appointed to the Department on July 5, 1989. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. CCRB has requested a penalty of the forfeiture of 7 vacation days.

In another case an eleven-year lieutenant with no prior disciplinary record forfeited three vacation days for ordering subordinates to conduct a stop of two individuals when there was no sufficient legal authority to do so. Complainants were taking a leisurely walk in their neighborhood on a summertime evening. **Disciplinary Case Nos. 2014-11685 & 2014-11686, signed October 14, 2015 (Weisel)** In another case two eight-year police officers with no prior disciplinary record forfeited two vacation days each for stopping complainant without sufficient legal authority. Respondents were at most justified in making a level-two inquiry to speak with complainant about their concern that he might be carrying an illegal gravity knife.

Disciplinary Case Nos. 2014-11787 & 2014-11788, signed October 13, 2015 (Adler)

In a third case, an eighteen-year lieutenant with no prior disciplinary record received a reprimand for stopping complainant and frisking his bag without sufficient legal authority. Respondent may have been able to approach and question, but the factors did not rise to the level of reasonable suspicion. **Disciplinary Case No. 2013-10686, signed June 22, 2015 (Porter)**

In this case Respondent Rodriguez has a long career with numerous Department Recognitions and the highest recent evaluations. His one prior formal disciplinary charge was remote and concerned a very different charge from this case. In the current case, it is also noted that he did have valid reasons to approach the individuals to question them, but

that he went too far in telling them, "Don't move," and attempting to stop them.

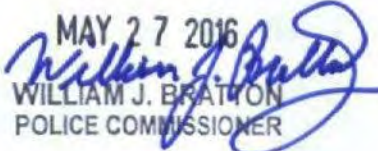
Based on the totality of Respondent's career and consistent with prior penalties, I recommend that Respondent receive a reprimand.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

MAY 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT ENRIQUE RODRIGUEZ
TAX REGISTRY NO. 895928
DISCIPLINARY CASE NO. 2015-13701

On his last three annual performance evaluations, Respondent received an overall rating of 5.0 "Extremely Competent." He has received 24 medals for Excellent Police Duty, five medals for Meritorious Police Duty, and one Commendation. [REDACTED]

From February 9, 2010 to June 7, 2012, Respondent was on Level 1 Force Monitoring for having three or more CCRB complaints in one year.

Respondent has been the subject of one prior adjudication. In 1994, he forfeited 15 vacation days for failing to properly safeguard his firearm.

Nancy R. Ryan
Assistant Deputy Commissioner Trials